

CASE REPORT

CONFIDENTIAL

WILDLAND FIRE INVESTIGATIVE CASE REPORT

Fire Name & Number:	Banner Fire #096
Refuge:	Chincoteaque
Fire Date:	June 23, 1997
Report Prepared By:	John Rones
Position Title:	Forest Technician
Period of Investigation:	June 24 - August 23, 1997 ¹
Date of Report:	August 26, 1997

SYNOPSIS

Investigation reveals that the above fire was caused by sparks from an HD 14 Allis-Chalmers loader being used by Don Banner Logging Company on the day the fire started. This loader was not equipped with a spark arrester or any device to prevent the escape of sparks as required by Oregon Forest Law, Chapter 477.645, and OAR 629-43-015. There is also evidence that on the morning of the fire there was a small fire at the landing in the vicinity of the origin of the later fire which was not properly extinguished, and either caused the main fire or contributed to its ignition and spread.

On June 23, 1997, the Don Banner Logging Company was conducting logging operations in Section 2, Township 33 South, Range 8 West, near the town of Mono in Josephine County. Sometime during the morning a fire started near the diesel loader, which was being used to load logs on Banner's trucks to take to his mill in Mono. These logs had been cut during the previous year, and there was much dry slash on the ground. During the week preceding this operation the temperature had been high, with low afternoon humidity and easterly winds. These conditions prevailed on June 23.

¹The period covered should be the time from start to finish of the investigation. It does not imply that this period was exclusively devoted to the investigation of this matter. It is only to indicate the cut-off date to know what later events are covered by the report. Later relevant events or information can be reported by supplement.

During the morning of the operation on the 23rd, there had been a small fire on the north slope of the landing near the loader. Harper, the loader operator, claims to have put this fire out. Banner claims to have sent a man to the landing from Mono to have the operation shut down because of low humidity around 11 a.m.; however, Herman Franks, Banner's foreman at the landing, had the loader operate until 12:45 p.m. to finish loading. The fire was reported at 2:11 p.m. The State Forestry Department arrived at 2:30 p.m. and observed the fire burning on the north slope of the landing behind the loader.

Investigation of the origin area revealed the fire had started in or near a clump of matted, dried grass about 25 feet from and in line with the tailpipe of the loader. The undersigned is of the opinion that the fire was caused by sparks from the loader, which was not equipped with a spark arrester.

This is further borne out by the observation of persons who were at the scene at the time and said they first observed the fire behind the loader on the north slope. It was apparently commonly known that the loader could start a fire and that it shot out sparks "like a Roman candle." The sparks from this loader either directly caused the fire to break out, or the fire earlier that morning had not been properly extinguished and smoldered, causing the fire.

A Notice of Violation and Notice to Appear were issued to Banner, and a complaint charging Banner with violation of ORS 477.645 has been filed in Josephine County District Court. Hearing has been set for September 15, 1976.

Persons Named in the Report

John J. Rones
Oregon State Department of Forestry
1825 West Elm Street
Roseburg, Oregon 97842
Telephone (503) 627-4831
Unit Forester

William Able
Mono Guard Station
927 Fury Lane
Mono, Oregon 97247
Telephone (503) 726-1384
Forest Officer

Fred Cook
Robert Day
Mono Guard Station
927 Fury Lane
Mono, Oregon 97247
Telephone (503) 726-1384

Fire Fighters

Don Banner
231 West High Street
Mono, Oregon 97842
Telephone (503) 627-4832
Owner, Banner Logging Company

Herman Franks
Box 296
Mono, Oregon 97842
Telephone (503) 627-4931
Foreman, Banner Logging Company

Ansil Adams
12684 Highland Circle
Roseburg, Oregon 97924
Telephone (503) 496-8721
Timber Owner

A. L. Harper
710-1/2 Clover Lane
Mono, Oregon 97842

Bill Isle
17 Bush Street
Mono, Oregon 97842
Logging Crew Member

Jake Jones
3120 Flower Street
Mono, Oregon 97842

"Loop" Klappett
Box 30
Mono, Oregon 97842

Clark Mann
Address Unknown
(Moved to Alaska)

Mrs. Clara Nodel
Mount Baldy Lookout
No Telephone
Lookout

Syd O'Neal
72 Maiden Lane
Mono, Oregon 97842
Telephone (503) 672-9112
Adjacent Owner

Fred Pratt
97274 Honeydew Boulevard
Halfway, Oregon 97392
Telephone (503) 222-2222
Fire Boss

T. V. Quick
Address/Phone Burned
Mono, Oregon 97842
Burned-out/Upset Homeowner

INVESTIGATION¹

1. On June 24, 1997, the undersigned was assigned to investigate the subject fire.
2. That day at 1530 hours I contacted William Able, Forest Officer at the Mono Guard Station. He was the first person to arrive at the fire.² Able said that on the previous day, June 23, 1997, at 2:11 p.m., he was at the station and received a radio call from the Mount Baldy Lookout reporting a fire about 2 miles north of the station near the Banner Logging Company logging operations.

He said he and Fred Cook and Bob Day,³ both fire fighters, arrived at the fire about 2:30 p.m. The fire was around 5 acres in size, burning on the north slope of a log landing. The fire had burned and was burning in a "V" shape up the slope, with the base of the "V"

¹This is the body of the report. It should consist of a chronological description of what the investigator did in their investigation, whom they talked to and when, what they said, and what they observed. It is an account of the important matters.

²The first person or crew on a fire should always be contacted early in the investigation. Their observations will give critical information about the location, size, etc., of the fire before it was too large to form a conclusion as to where and how it started, etc. Also note that it is frequently desirable to commence an investigation by questioning persons with the Refuge or others who would be expected to testify to essential facts. In this case, the location of the fire at its first observation by persons not motivated by bias to claim it was elsewhere is vital.

³Be sure to ascertain any other persons present when witnesses observe important facts. Question these persons as to corroborating facts. (See footnote 4.)

about 20 feet above the level of the landing. There was no one at the landing at the time, but he later saw several men working at the head of the fire, over the ridge above it. The fire was burning fast and hot in slash and brush. There was very little wind at the landing, but he could see that a wind was blowing the fire at the top of the ridge near the head.⁴

He said he called for help when he returned to the truck, and went around to the other side of the hill to start work on the head of the fire. He said he worked on the fire the rest of that day, and had not talked with any of the men who were already there about the fire or how it started.

3. At the same time I talked with Fred Cook and Bob Day, both fire fighters. Cook stated he went with Able to see the fire when they first arrived. They had to park the truck on the hill leading up to the landing since they couldn't get through. He affirmed what Able had said. Day stated he hadn't seen anything since he had remained with the truck.⁵
4. Able, Cook, Day, and I went to the landing that day about 5 p.m. Able and Cook pointed out where the fire was when they first saw it. At this time, I took a photo of the north slope of the hill. Later on July 5, 1997, Able made the marks shown on the photo to indicate where the fire was burning and had burned when he arrived and first saw it.⁶

The landing is about 1 acre in size. When we were there, there was a log deck in approximately the center with around a dozen logs on it.

The landing is saucer shaped, surrounded on the north, east, and south sides by steep slopes covered with burned remains of slash, logs, and brush. A spar pole is located to the north of the deck, and an AC HC 14 diesel loader was about 50 feet to the east and about 10 feet from the north slope. The attached diagram shows their relative positions. The road leading into the landing is on the west.⁷

⁴These are valuable observations. Such evidence often can be decisive to dispute claims of a potential defendant stating the fire started far from any operations he was conducting. The fire may burn over the area later and completely destroy evidence of where the origin was or how it was burning.

⁵See footnote 3. Cook could be an independent witness of the essential facts. It is explained why Day cannot testify to these facts: It is because he did not go up - not because he did not appear, as Able and Cook say they did.

⁶Able's description to Roness, the Fire Investigator, and the narrative of the report cannot convey the details necessary to continue effectively. Hence, Roness wants to see exactly where the fire was when Able saw it and clear up any questions he may have as soon as possible. This use of a photo is invaluable. It shows the marks on it are Able's, not Roness trying to reconstruct what Able said - which may be wrong.

⁷Try to imagine you are describing the area to someone who has never seen it. A series of photos could be used for this purpose, but there is no substitute for a clear, verbal, narrative description of what is there. A

The place on the hill where Able said he first saw the base of the "V" of already burned material was on the slope behind the loader. The tailpipe of the loader was canted at an angle and pointed toward the direction of the slope. We measured and found that the distance from the end of the pipe to the slope in a clump of charred and matted grass near the base of the "V" to be 25 feet. This area was practically in direct line with the tailpipe.

The loader had no muffler or spark arrester of any kind. The attached photo shows the loader and the tailpipe, and the absence of any spark arrester. Photos demonstrate the line of the tailpipe with the deeply charred and matted grass on the hill behind it.⁸

5. The following day, June 25, 1997, at 10:30 a.m., I talked with Don Banner, owner and operator of the Banner Logging Company,⁹ at his home at 231 West High Street, Mono, Oregon.¹⁰

He stated he had not been present at the landing when the fire started.¹¹ He said he had been at his mill in Mono at the time. He stated he had been logging at the landing during the morning of June 23, 1997, but had shut down about noon because of low humidity.

He said he had sent a man out around noon from the mill to tell his foreman, Herman

sketch showing important references which will be used throughout the report to refer to places other witnesses are likely to (or do) refer to avoids confusion and will assist in setting these facts on paper.

⁸The most effective use of photos is to show exactly what is on the ground. They are not substitutes for clear explanation, but add to clear verbal description. A jury seeing an important fact in a photo, just the way you testify, cannot help but be impressed.

⁹No investigation is complete unless the person upon whom responsibility is finally indicated is talked to, particularly in circumstantial cases. His explanation of what occurred may well include the investigation. His excuse or view of the facts may well be the one presented at any trial of the matter; this should be known. His statements may be inaccurate or colored with bias, but they should be included in the report. Even if these statements indicate an absolute defense to what happened and there is no indication they are false, they should always be included. When this party is interviewed will depend upon the judgement of the Fire Investigator. It is best to interview him, however, after as many definite facts as possible are established for the obvious reason that your questions can then be as *precise* as possible. Otherwise, the questioning tends to wander and the party can effectively evade or avoid areas which you may not have reason to pursue. When you come back to check these out, he may not even talk to you. (See footnote 28.)

¹⁰Note that the addresses of any persons referred to should be included. This is necessary for directing demands and serving summons and complaints or subpoenas, if necessary. It is also necessary for the attorney to know, should he wish to take the person's deposition.

¹¹Remember that - concerning important matters - what a person says he does not know, particularly one upon whom suspicion rests, is as important as what he does know. He will have trouble testifying at trial to what he previously said he did not know in this respect.

Franks, to close down.¹²

Banner stated he had around 12 men working at the landing on the morning of the fire. They were skidding and loading logs he had cut during the previous season under a contract he had with Ansil Adams, owner of the timber. The logs were being hauled to his mill in Mono.

Banner said he had no idea how the fire started. He suggested that it may have been started by hunters.

6. Franks, Banner's foreman, was at the mill at the time and I talked with him after talking with Banner. Banner was present when I spoke with Franks. Franks' address is Box 296, Mono. He lives about 3 miles east of Mono on Highway 19 at the Happy Dell Trailer Oasis.¹³

Franks stated he had started working on the morning of the fire about 6 a.m., skidding cut logs and loading them. I asked him if he had seen the fire start, and he said that he had not. I asked him when it started, and he said around 1 p.m. I asked him how he remembered the time. He said he had shut down about 12 noon because of low humidity. Everyone was sitting around eating lunch when the fire was first observed. I asked him where the fire was when he first saw it, and he said it was high on the ridge above the landing. He drew a sketch to show me; he located the fire at that time about 200 feet up the north slope.

He said the fire was about 20 feet in diameter when he first saw it. A copy of this sketch and his distances, written by him, is attached.¹⁴

¹²Note that if an employer or principal is to be held liable for the torts of his employee or agent, evidence of the agency or employment and the scope of his authority to act on the employer's behalf must be introduced. This evidence may be in the form of facts showing the employment independently. A statement by the employer to this effect, however, coupled with evidence of what duties that agent actually performed, is effective for this purpose. An investigator should not rely solely on the statement of the employee as to who his employer is as this evidence is given very little weight and is often inadmissible to prove the employment.

¹³See footnote 10. A box number as an address is of no help in giving directions to a sheriff in serving a subpoena or summons and complaint.

¹⁴Note that this sketch is attached to the report as an exhibit. It should be included as an actual copy of the sketch made by the witness. Franks' statement is in conflict with what Able and Day said. To be sure you have not misunderstood Franks and to inform what Banner's probable defense of hunters will be based upon, this information should be included. This is the first major inconsistency in your theory, and suggests you should quickly talk with others at the landing to ascertain whether they will also testify that the fire started so far up the hill. This is also the point where the investigator may well wish to consider getting written statements from others at the landing because of the possibility that Banner may talk to them and

I asked him whether this was the fire that escaped and caused the wildlan fire. He said all of his men went up to put it out but by the time they could reach it, it was too big to handle.

I asked him whether he had a fire anywhere on the slope in back of the loader that morning. He said there had been a "smudge" in some grass near there a little earlier in the morning, but that it had been put out. He was sure that hadn't caused the fire because that fire had been put all the way out.

I again asked him how long after he first saw the fire that it got away. He said, "Almost immediately. It seemed to explode."

I asked him whether he could be mistaken as to the time the fire got away. Could it have been around 2 p.m.?

He said no, because he was at the mill at 2 p.m. He had gone back to report the fire and get help.¹⁵

He added that the cats had stopped working around noon, but that they had loaded until about 12:45 p.m. because he did not want to send any trucks back empty.

I asked him who had been working at the landing that morning. He couldn't remember all their names, but said the following were there:

A. L. Harper, operated the ladder, address unknown.

Bill Isle, a faller, address unknown.

Jake Jones, a cat operator, address unknown.

"Loop" Klappett, a cat operator, address unknown.¹⁶

convince them that the fire was high, or suggest this fact if they don't actually remember.

¹⁵The inconsistency as to the time the fire started may or may not prove to be important. Franks says the fire escaped immediately at 1 p.m. This may be based upon inaccurate estimation of the time it started or what he means by "immediately." It may be a feeble attempt to suggest that the fire had nothing to do with his operations since he may suspect that you know exactly when it first got away.

¹⁶These are, of course, essential persons to talk to as soon as possible. They are possible witnesses as to exactly where the fire occurred and what caused it. It will take a great deal of opinion testimony and hypothetical testimony to overcome the statements of five or six persons who actually say they saw the fire start at a place and in a manner totally inconsistent from your theories. They must be reached as quickly as possible for their memories may be bad, or someone else could suggest other possibilities which might cause them to doubt what they actually saw. Note the fact that Banner and Franks do not give the addresses may be an attempt to slow down the investigation.

Banner said he had their addresses, but it would take some time to round them up.

7. On June 26, 1997, I contacted Mrs. Clara Nodel (lookout at the Mount Baldy Lookout Station), who was on duty the afternoon of June 23, 1997.¹⁷

She stated she remembered the report of the fire very clearly. The lookout is located about 3 miles west of where the smoke was first observed. It looks down into the canyon where Banner's operations were taking place. When she first saw the smoke, it was a thin blue column extending around 1,000 feet into the air. It remained this way for about 10 minutes and then broadened quickly. It seemed to spread very fast after that. It burned up the mountain toward the lookout that afternoon and at 6:30 p.m., from her log, the station was evacuated because it was threatened by fire. She went in again the next morning. The fire did not do any damage, though it burned to the edge of the clearing around the station.

The station is located about 1,000 feet above where the fire was first observed. The weather records of the station taken and recorded by Mrs. Nodel show a period of low humidity, high afternoon temperatures, and late afternoon easterly winds for the week prior to the fire. A copy of these records is attached to this report. The originals of these records are located at the Grants Pass Unit headquarters and will be retained until further word is received on this matter.

Mrs. Nodel checked her log and fire sightings, and verified that she first observed and reported the fire at 2:10 p.m. on June 23, 1997. A copy of the Lookout's Smoke Report and radio log is attached showing her entry of this sighting.

8. On June 27, 1997,¹⁸ I located A. L. Harper at his home at 710-1/2 Clover Lane, Mono, at about 1:30 p.m. I was accompanied by Bob Land, Forest Officer. Mrs. Harper was also present during the interview.¹⁹

¹⁷The interview with the lookout can often be very useful in developing what occurred during the initial spread of the fire. Her log will verify Able's recollection of the time of the report of the fire, and will give a jury visible evidence of the entry of the sighting of the fire should this time become important. If the lookout is close enough, her recorded weather observations will help to establish the weather picture. Often, the lookout's description of a fire and its spread is very dramatic and helps to paint the picture of the spread of the fire to a jury who may only hear about it from seasoned firemen, who tend to take such matters in stride.

¹⁸It may often be very difficult to locate a person who has been referred to you. It is not necessary to describe your efforts in your report unless germane to some issue in the matter.

¹⁹Note that Ronas has decided to take an assistant with him in interviewing those at the landing. This, in lieu of written statements, is for the judgment of the investigator. Note also who else was in attendance at the interview. Should it be necessary to prove what a person has said - either by way of proving his admission or to impeach the person if he

Harper stated he had been operating the loader on the morning of the fire. He remembered they had closed down the operation because of low humidity. He couldn't remember the time. He couldn't remember whether it was before or after lunch. He said he had just turned off the loader when he heard someone yell, "Fire!" He turned around and saw a fire about 50 feet up the hill in back of the loader. It was about 10 or 15 yards square, and was burning pretty fast and hot. He and the others at the landing immediately went up to where the fire was burning and started putting a line around it. He doesn't remember how long they worked on it, but it seemed a long while. It looked as though they had pretty well gotten it out when a gust of wind came up and started a couple of spots up the hill. By the time they reached these spots, the fire was all over the hill. It spread up and over the ridge, and there was nothing they could do.

He said he did not notice what the others were doing and he did not know where Franks was during this time, though he imagined he was working with the others.

I asked him when the small fire earlier in the day had occurred. He was surprised I knew about this fire. He said it was a small fire in some grass up on the hill. I asked how high it was and he became evasive - he couldn't remember. I asked him whether it had been put out. He said he had put the fire out himself and had Franks come over and take a look to make sure it was out. He said he didn't want to take any chances with a fire happening near his loader. I asked him what he meant, but he said he thought he had said enough.

When asked who was working on that morning, he said:²⁰

Franks, foreman.

Bill Isle, faller, address unknown.

9. On June 28, 1997, I contacted Bill Isle, Banner's faller, at a bar in Mono called the Fallen Angel. Land was also present. Isle's address is 17 Brush Street, Mono.

When I asked Isle about the fire, he asked me not to ask him any questions about it. I asked him why. He said he knew I was investigating the fire and if he said anything that might hurt Banner, it could hurt him (Isle). He had to live too, he said. I asked Isle whether he thought that anything he said would hurt Banner. He said Banner was a fine

testifies differently on the stand - the investigator should have a record as to when, where, and who was present when the statement was made. The form of this report is in part designed to establish and record the information as a routine matter.

²⁰Asking each person at the landing who else was there will not only be a check against the recollection of the others, but may reveal the names of persons whom Franks feels would not help him and, hence, whom he "doesn't recall" at the time.

fellow, and he didn't want any tricks. That was all we could get from him.²¹

10. At about 2:45 p.m. that afternoon I contacted Jake Jones at his home at 3120 Flower Street in Mono. Land was present.

Jones said he didn't know anything about the fire earlier in the morning, but he remembers the big fire. He said everyone knew the fire had been caused by that old loader, but if he were asked that question in court he would deny he ever said it. He said they were loading a bunch of logs on a truck that came up after they had all knocked off for lunch. He thought they had closed down because of humidity, but when this truck came Franks decided to load it. They were right in the middle of loading when someone yelled, "Fire!"²² Jones said his back was to the fire and when he turned around, he saw a small fire burning about halfway up the slope. He couldn't estimate the distance, nor does he remember its position in relation to the loader, but it was not any 200 feet up the slope.²³

He stated he went up with the others to try to put it out. He said they worked on it for a while, but a wind came up and spread it up the hill. There wasn't anything that could be done after that.²⁴

I asked him how he knew the fire had been started from the loader. He answered that the loader didn't have any muffler on it, and every time it was revved up it sprayed sparks "like a Roman candle."²⁵ He said he would testify to the sparks he saw come from the

²¹This is typical of negative information which, far from hurting the case, may be of invaluable help should Isle decide to testify on Banner's behalf at the trial. It shows not only that he refused to say anything to the investigator, which might throw light on the incident, but that he is probably prejudiced in favor of Banner and his testimony would have to be tempered accordingly.

²²Franks had said they had just stopped loading and Harper had said he had just turned off the engine when they first saw the fire. These could be mistaken estimates or consciousness on their part that operation of the loader was connected with the fire, particularly after they had been told to stop because of low humidity. Jones' statement, however, strongly suggests such a connection.

²³One may be reluctant to be tied down on exact location, so the reverse approach may be helpful to have the witness indicate it was not as far up the hill as Franks says it was.

²⁴This helps explain the time difference when Franks said the fire escaped and when it was first reported. They apparently fought the fire for a while before it went off "immediately." It may be that Franks either has an aversion for the truth or he may deeply feel that not enough was done to control the fire while it could have been stopped, and was attempting to steer the investigator away from inquiring into the point.

²⁵An investigator would be lucky to get this kind of evidence. The description, however graphic, is undoubtedly exaggerated. This witness appears friendly now, and it might be advisable to get his written statement

loader, but that he wouldn't say the fire started from the loader.

I noted that he spoke bitterly about Banner, and I asked him whether he and Banner got along all right. He said they got along fine, except Banner owed him wages from a previous job, hadn't paid him for it, and claimed he didn't owe him.

He then went into a long story as to why Banner owed him the money.²⁶

I asked him who else was at the landing at the time of the fire. He said:

Franks, foreman.

Harper, operated the loader.

Bill Isle, a faller.

Clark Mann, a faller.

Jones said he knew Mann, and right after the fire Mann went to Alaska. He didn't know how he could be contacted.

11. I located "Loop" Klappett, Box 30, Mono, at the timber operations of Hardey Logging Company near Plowtown, Oregon, on July 16, 1997. Land was also present. Klappett said he had not been working for Banner on the day the fire started. He had worked for him the preceding week, but after drawing his time on Friday, had gone to Portland and hadn't returned until the day before yesterday.²⁷
12. In order to further check out the names and addresses of everyone at the landing and to check about the maintenance of the loader, I telephoned Banner at his home on the night of July 16, 1997. I asked him the above questions and he said his attorney had told him not to talk to any Forestry Department people about the fire. He said he couldn't give any more information on this matter under the circumstances.²⁸

in case Banner decides to pay him his back wages.

²⁶This witness has corroborated many facts of your case. It would be a mistake, however, to stop your investigation at this point. You want to get as many statements as possible from those at the landing at the time. Remember that this fellow might be as prejudiced against Banner as some others are for him. He might even see this as a possible means of blackmailing Banner into giving him wages to which he is actually not entitled.

²⁷This is further negative information which should be included. See footnote 11.

²⁸Usually an investigation cannot be conducted from a desk, and the best way to find out what people know is to talk with them face to face. Therefore, a telephone contact of this sort is not recommended, except perhaps to make an appointment. Should a person indicate that he has been advised by his attorney not to talk with you, you should not attempt to contact him. Sometimes an attorney will call you direct and advise you not to get in touch with his client. You should not attempt to do so. This is particularly

13. On August 2, 1997, I contacted Mr. Syd O'Neal, adjoining landowner, at his home at 72 Maiden Lane, Mono.

Mr. O'Neal stated he and his insurance company estimated that 750 acres of his land, including his barn and \$2,000 worth of hay, had been burned in the fire. He stated he owns about 2,500 acres of land in all. On the boundary between his land and that on which Banner was cutting, there is a fence which follows the section line for about a mile and a half. He said that last year Banner had come to him and asked him about this fence since he understood he was to cut to the creek, which lies about 100 feet inside O'Neal's property from this fence. O'Neal talked with Ansil Adams, the owner of the land. Adams must have told Banner to cut to the fence line because he never heard anything more about it.

O'Neal had checked the cutting during the previous year, and Banner had stopped at the fence line.²⁹ In any event, O'Neal said, the fire burned past this fence line and the creek and into his property about a mile before it was stopped.

He was satisfied with the manner in which the department had fought the fire on his property, but said he heard there was dissatisfaction about the way the fire had been fought to the east of his property. He didn't know any details and did not want to mention any names.³⁰ He would not say any more.

14. I talked with Fred Pratt, State fire boss on the fire, on August 12, 1997. I told him what Mr. O'Neal had said and asked him if he knew what O'Neal meant, and whether there had been any difficulty in fighting the fire in general.

important if a criminal or civil case is pending in the matter against the attorney's client. It is highly improper in such a case for opposing counsel or his investigator to contact the client directly. At the trial you may testify to the fact that you attempted to obtain further information, but were unable to do so because you were told that the party would not talk to you on advice of counsel.

²⁹An often neglected part of investigations is to ascertain what proof is available as to the fact that the fire escaped to the property of another. It may be in this particular case that the fact the fire burned to the land of Adams, the party with whom Banner had contracted, is sufficient for this purpose. This information from O'Neal, however, avoids the necessity of relying upon Adams - who, depending upon the nature of his contract with Banner, may himself be liable under the Landowner/Operator Liability Law. O'Neal's information suggests there are no boundary line disputes which would have to be settled in the present case to enforce the State's claim.

³⁰Whenever it is suggested that the Department did not properly control the fire, be sure to check into the matter. The claim of improper or incompetent fire fighting may be of no substance. If it appears that the person responsible for the fire will make such a contention, the matter should be brought out in the report so that a proper evaluation may be made of the case.

Pratt said the complaint probably came from T. V. Quick, the owner just east of O'Neal. Quick had lost his home and felt the Department had not given enough protection to it. The house was constructed in a clearing near the property line between his and Adams' timber and about a mile from the origin area. Grass was growing right up to the house and the timber came up to 30 feet all around the house. Late on the afternoon of June 23, 1997, the fire caught in some heavy slash to the north of the house and took off. A heavy wind came up and spread the fire toward the house. It was an impossible place to put in protection lines. If anyone tried to stay in there and protect the house, they would have been killed.

Right after the State crews arrived, Mr. Quick was evacuated from his house. He put up a fuss when we told him that he and his family should clear out as soon as possible. Afterwards he came up to me and said he had five men who had told him the fire crews had panicked and could have saved the house if they had remained. This is untrue.

The fire was generally difficult to control because it burned mostly in dried slash from the year before. Late afternoon winds on the first day caused the fire to spread almost 2 miles before it died down during the night. It was fortunate there were enough men to take advantage of the break that night and the next morning and keep it from going farther.³¹

15. Attached is the District Fire Cost Report, showing fire suppression costs incurred on this fire were \$14,350.³²
16. Attached is the District Fire Report, showing action taken by the Forestry Department on this fire.³³

³¹See footnote 30. Note also that a preliminary inquiry of the fire boss or line boss as to the difficulty in fighting the fire may well be made during the investigation. Testimony from these persons will generally be necessary to establish that costs were in fact incurred and that they were incurred in fighting this fire. If a particularly large amount is spent, a jury may question its reasonableness unless such persons can testify there were difficulties in fighting the fire which required certain men or equipment. This preliminary inquiry may bring out important considerations, such as the fact that great efforts had to be made to protect a Boy Scout camp with 100 children campers. Other than its impact, no one will question the expenditure of funds to afford such protection.

³²No further explanation than this is usually required. Note, however, if it is determined the matter will be pursued by a court action, all of the underlying records of this fire cost report should be assembled and kept.

³³Always include the District Fire Report. The investigator should always verify the accuracy of this report against any other information he has obtained from others, such as first report of the fire, first person to respond, time of response, weather observations, etc. If inconsistencies are noted, an appropriate memorandum to the file should be made by the person responsible for the report. This is a public record. It can readily be seen how an attorney could cast doubt upon the testimony of Able, for example, when the report shows that someone else was first on the fire (20 minutes, for

17. Attached are the Notice of Violation and Notice to Appear issued to Banner for violation of ORS 477.645.³⁴
18. Attached are signed statements taken during investigation and a list of individuals interviewed and to what they can attest.
19. Attached are copies of all Record of Fire Conditions and Request for Assistance issued during fire action.

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AUTHORITIES AND LEGAL MANDATES

50 CFR Part 11: The regulations contained in this part provide uniform rules and procedures for the assessment of civil penalties in connection with violations of certain laws and regulations enforced by the Service.

50 CFR 27.95: Fires. On all National Wildlife Refuges persons are prohibited from the following: (a) Setting on fire or causing to be set on fire any timber, brush, grass, or other flammable material including camp or cooking fires, except as authorized by the refuge manager or at locations designated for that purpose or as provided for under 26.33c of this subchapter C. (b) Leaving a fire unattended or not completely extinguished; (c) throwing a burning cigarette, match, or other lighted substance from any moving conveyance or throwing of same in any place where it may start a fire; and (d) smoking on any lands, including roads, or in any buildings which have been designated and/or posted with no smoking signs.

Title 18 USC 1855: Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States, or under contract for purchase or for the acquisition of which condemnation proceedings have been

instance) after he actually arrived.

³⁴Where a strong case is indicated, it is not necessary to await the outcome of any pending criminal action before submitting the report. If the matter is actually taken to trial and a conviction is obtained, this fact cannot be used in evidence in the civil case for fire suppression costs. If the criminal trial does not convict, this does not bar the civil action. If the defendant pleads guilty, this fact may be used in evidence as an admission. If the trial turns up something unexpected, or the defendant attempts to justify his conduct in any way, or any other matter which in the judgment of the investigator will affect future handling of the matter, he should prepare a supplemental report and point these things out.

³⁵Every report should be signed by the person making it.

instituted, or upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

This section shall not apply in the case of a fire set by an allottee in the reasonable exercise of his proprietary rights in the allotment.

Title 19 USC 1856: Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same is held in trust by the United States, or while the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined not more than \$500 or imprisoned not more than six months, or both.

16 USC 668 Eagle Protection Act:

Criminal violation: “Knowingly, or with wanton disregard for consequences of his act take ... any bald eagle ... or any golden eagle ... or any part, nest, or egg thereof of the foregoing eagles ...”

Civil violation: Knowing violation or wanton disregard not required.

16 USC 1538 Endangered Species Act: 50 CFR 17.21c. Taking endangered species of fish or wildlife and endangered species of plants is prohibited. “Taking” definition includes “harming” species -- killing, injuring, or significantly modifying or degrading habitat where it kills or injures wildlife, significantly impairs essential behavioral patterns, including breeding, feeding, or sheltering.

16 USC 703 Migratory Bird Treaty Act: “...It shall be unlawful at any time, by any means or in any manner, to ... take ... (or) ... kill ... any migratory bird, any part, nest or egg of any such bird ...”

16 USC 668dd National Wildlife Refuge Administration Act: 50 CFR 17.21. No person shall take any animal or plant on any National Wildlife Refuge, except as authorized ...”

50 CFR 27.51.a. Disturbing, injuring, ... or destroying ... any plant or animal on any National Wildlife Refuge is prohibited.

50 CFR 27.61. Destruction, injury, defacement, (or) disturbance ... of any public property including natural objects or private property ... is prohibited.

50 CFR 70.4. Prohibited acts enumerated in part 27 are equally applicable to National Fish Hatchery areas.

18 USC 2 Aiding and abetting to pursue someone who helped, e.g., drove the get-away car.

18 USC 7 Assimilated Crimes Act for lands under exclusive or concurrent jurisdiction.